FILED
SEP 15 1994
OFFICE OF THE CLERK

No. 94-261

In the Supreme Court of the United States

OCTOBER TERM, 1994

GARY HILL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

DREW S. DAYS, III
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

In the Supreme Court of the United States

OCTOBER TERM, 1994

No. 94-261

GARY HILL, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the court of appeals erred in reversing an order suppressing evidence seized under warrant-authorized searches of his law office.

1. Petitioner and two others were indicted by a federal grand jury sitting in the Western District of Texas. They were charged with conspiracy to commit racketeering, in violation of 18 U.S.C. 1962(d); racketeering, in violation of 18 U.S.C. 1962(c); extortion, in violation of 18 U.S.C. 1951; and mail fraud, in violation of 18 U.S.C. 1341. Pet. App. A3.

Petitioner moved to suppress as evidence all financial records seized during searches that occurred in May and November 1992. The searches were conducted pursuant to search warrants authorizing the seizure of a wide

variety of records from the offices of the law firm in which petitioner was the managing partner. On August 25, 1993, the district court suppressed as evidence "all items dated before 1986 and all check stubs" seized under the May search warrant on the ground that the warrant did not authorize seizure of items pre-dating 1986 and did not include the term "check stubs" in the category of records listed in the warrant. Because probable cause for the November search warrant was based in part on information contained in the check stubs, the court also suppressed all evidence seized during the second search as a fruit of the first search. Pet. App. A2-A4.

2. The court of appeals reversed. Pet. App. A1-A19. The court held that the check stubs were within the scope of the warrant authorizing the seizure of the cash disbursement journal. Alternatively, the court concluded that the officers were entitled to seize the check stubs under the plain view exception to the warrant requirement. The court also vacated the order suppressing the evidence seized during the November search as a fruit of the first search. The court, however, agreed with the district court that documents generated before 1986 were outside the scope of the warrant. The court's remand requires the district court to rule on the identification of the pre-1986 documents and to address the remaining arguments raised by petitioner's second motion to suppress.

3. Petitioner contends (Pet. 9-15) that the court of appeals reversed the trial court's factual findings, in violation of the clear error standard of review. Petitioner also contends (Pet. 16-20) that the officers who executed the May warrant lacked justification for seizing the check stubs because the stubs were not listed as documents subject to seizure in the warrant, and the officers did not have probable cause to believe that the

stubs constituted evidence of a crime. Petitioner further contends (Pet. 20-23) that the court of appeals' ruling violates the particularity requirement of the Fourth Amendment.

Whatever the merits of petitioner's contentions, they are not ripe for review by this Court. The court of appeals' decision places petitioner in precisely the same position he would have occupied if the district court had denied his motion to suppress. If petitioner is acquitted following a trial on the merits, his contentions will be moot. If, on the other hand, petitioner is convicted and his conviction is affirmed on appeal, he will then be able to present his contentions to this Court, together with any other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review of the court of appeals' decision would be premature at this time.*

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

DREW S. DAYS, III
Solicitor General

SEPTEMBER 1994

---

* Because this case is interlocutory, we are not responding on the merits to the questions presented by the petition. We will file a response on the merits if the Court requests.